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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 186

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L., ET AL., PETITIONERS

v.

THE AMERICAN TOBACCO COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE[1]

OPINIONS BELOW

The opinions of the Circuit Court for Jefferson County, Kentucky, are unreported (R. 22–35). The opinion of the Court of Appeals of Kentucky, as originally handed down June 2, 1953 (R. 70–

[1] This *amicus curiae* brief is filed in response to this Court's invitation to the Solicitor General to file a brief setting forth the views of the National Labor Relations Board (R. 104–105).

78), is reported at 258 S. W. 2d 903; and as modified on rehearing on February 5, 1954 (R. 95–103), is reported at 264 S. W. 2d 250. These opinions have not yet been officially reported.

JURISDICTION

The judgment of the Court of Appeals of Kentucky was entered on June 2, 1953 (R. 70), and a petition for rehearing (R. 79–94) was denied on February 5, 1954 (R. 95). On April 23, 1954, the time for filing a petition for a writ of certiorari was extended by order of Mr. Justice Reed (R. 104) to and including July 3, 1954. The petition for certiorari was filed July 2, 1954, and was granted on October 14, 1954 (R. 104–105). The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

QUESTION PRESENTED

The Board's interest in this case is limited to a single question, namely, whether the National Labor Relations Act precludes a state court, in a labor dispute subject to the Act, from requiring drivers employed by common and contract motor carriers to cross a strike-picket line established by their union at the premises of the carriers' customer, where the collective agreements between the carriers and the union permit the drivers to respect such picket lines.

STATUTES AND STATE CONSTITUTION INVOLVED

The pertinent provisions of Sections 2, 7, 8 and 10 of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. 141, *et seq.*, are set forth in the Appendix, *infra*, pp. 32–36. Other relevant statutory and state constitutional provisions are: Section 216 (d) of the Motor Carrier Act, 1935 (Interstate Commerce Act, Part II), 49 Stat. 543, 558, as amended, 54 Stat. 924, 49 U. S. C. 316 (d); Section 196 of the Constitution of Kentucky; and Kentucky Revised Statutes, Sections 281.600, 281.610, 281.685, and 281.990. These are set forth in the Appendix, *infra*, pp. 36–40.

STATEMENT

Respondent, The American Tobacco Company, began this suit in a Kentucky state court to enjoin petitioner Union, Local 89 of the International Brotherhood of Teamsters, and its members from conducting picketing at respondent's premises. The trial court entered a permanent injunction which had the effect of requiring members of petitioner Union to cross the picket line at respondent's premises (R. 35–37). The Kentucky Court of Appeals affirmed (R. 95–103). Both Kentucky courts rejected petitioners' contention that the National Labor Relations Act precluded state courts from granting this injunc-

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tion. The pertinent facts may be summarized as follows:

Respondent is engaged in the manufacture and sale of cigarettes and other tobacco, and the Board has consistently exercised jurisdiction over its interstate operations.[2] It has a cigarette factory in Louisville, Kentucky, adjacent to which is a "stemmery" belonging to and operated by a wholly owned subsidiary, American Suppliers, Inc. The latter processes raw tobacco, which is then transported by conveyor belt to respondent's factory for manufacture into cigarettes. Although respondent and American Suppliers are separate corporations, their ownership and operations are so closely related that the courts below held they should be considered as one employer (R. 2, 3, 13, 41, 97–99).[3]

About March 30, 1953, petitioner Union, the certified bargaining representative of certain of American Suppliers' employees, called them out on an economic strike. A picket line was thereupon established around both the stemmery and respondent's cigarette factory (R. 96).

Among the members of this Union are employees of various motor vehicle, common and contract carriers, who transport products to and from

[2] See 2 N. L. R. B. 198; 59 N. L. R. B. 928; 108 N. L. R. B. No. 167 (June 3, 1954).

[3] See also, *American Tobacco, Inc. and American Suppliers, Inc.*, 62 N. L. R. B. 1239, 1242; *Irwin-Lyons Lumber Co.*, 87 N. L. R. B. 54, 56.

the premises of respondent, its subsidiary, and other customers (R. 99). The carriers identified in the record were all engaged in interstate commerce and were thus subject both to the Board's jurisdiction [4] and to the Motor Carrier provisions of the Interstate Commerce Act, 49 Stat. 543, as amended, 54 Stat. 924, 49 U. S. C. 301, *et seq.* The collective bargaining agreement between the Union and these carriers contained a clause permitting the union

[4] The record discloses the names of twelve carriers as involved in this proceeding: Bowling Green Express (R. 11–12), Huber and Huber Express Co. (R. 20), Middlewest Freightways, Inc. (R. 37–38), Commercial Motor (R. 46), Federal Express (R. 53), Silver Fleet (R. 56), Ziffrin Truck Lines (R. 56), C & D Truck Line (R. 58), Husman & Roper (R. 63), Johnson Freight Lines (R. 63), Crutcher Bros. Drayage Company (R. 56), and Clements Truck Line (R. 56). We are advised by the Interstate Commerce Commission that companies bearing those names (in the case of the last two, substantially similar names) engage in interstate operations under certificates of public convenience from the Commission. Unpublished reports for the year ended 1953 in the Commission's files indicate that eleven of these companies are Class I common carriers, each with annual revenue from interstate and intrastate operations in excess of $200,000 per annum, and one, the Crutcher Bros. Co., is a Class II common carrier with annual revenue of over $100,000. Hence, all of these carriers are engaged in commerce within the meaning of the National Labor Relations Act and come within the recently enunciated jurisdictional standards laid down by the Board. *Edelen Transfer Co.*, 110 N. L. R. B. No. 230, 35 L. R. R. M. 1275; *Albert Evans, Trustee of Local No. 391, and Thurston Motor Lines, Inc.*, 110 N. L. R. B. No. 122, 35 L. R. R. M. 1112; *International Brotherhood of Teamsters and McAllister Transfer, Inc.*, 110 N. L. R. B. No. 224, 35 L. R. R. M. 1281 (December 17, 1954).

members to refuse to cross picket lines established at the premises of customers of the carriers.[5]

On April 4, 1953, respondent brought suit in the Circuit Court for Jefferson County, Kentucky, to enjoin the picketing at its premises, on the ground, among others, that it threatened to stop pick-ups by employees of the carriers (R. 1–8). It was alleged, *inter alia,* that such cessation of service would be violative of Section 281.685 of the Kentucky Revised Statutes, which prohibits a common or contract carrier from subjecting "any person to any unreasonable discrimination." (R. 5; App. *infra,* p. 39.) On April 23, 1953, the trial court, accepting this contention and rejecting the Union's contention that the National Labor Relations Act had superseded Kentucky law in this dispute, entered a permanent injunction (R. 35–37).[6] This decree, although permitting picket-

[5] In relevant part, this clause provides (R. 21): "It shall not be considered a violation of this Agreement for employees covered hereunder to refuse to cross a picket line of a Union or refuse to handle unfair goods. The term unfair goods * * * includes * * * any goods or equipment transported, interchanged, handled, or used by any carrier, whether party to this Agreement or not, at whose terminal or terminals or places of business, there is a controversy between such carrier or its employees on the one hand and a labor union on the other hand; * * *"

[6] Earlier, on April 6, 1953, the trial court had issued a temporary restraining order (R. 8–11) which, *inter alia,* enjoined the Union and its members "from refusing or inducing, encouraging, coercing or otherwise causing or arranging with, the employees of other employers, particularly common carriers, or with such employers, to refuse to accept,

ing in limited numbers to continue, on the ground that primary and not secondary picketing was involved, has the effect of requiring members of petitioner Union employed by the common or contract carriers to cross the picket line at respondent's premises.[7]

The Union took an appeal from this provision of the injunction and respondent cross-appealed from the holding that the picketing was primary. The Court of Appeals of Kentucky rejected both contentions and affirmed (R. 95–103).[8] On the cross-appeal, the court found that, in view of the very close relations between respondent and its subsidiary, American Suppliers, the

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handle, transport, and deliver in accordance with their legal and contract obligations, property shipped by or to plaintiff."

Certain union members who continued to respect the picket line after entry of this order were found guilty of contempt (R. 22, 31–33).

[7] Thus, the injunction (R. 36–37) enjoins the Union and its members: "from causing, aiding or abetting any common carrier or contract carrier unreasonably to discriminate against plaintiff by refusing, while remaining an employee thereof, or inducing, encouraging, coercing, or otherwise causing or arranging with common or contract carriers or any persons connected therewith to refuse to accept, handle, transport and deliver, in accordance with their legal contract obligations, property shipped by or to other customers of such contract or common carriers."

[8] On June 2, 1953, the Kentucky Court of Appeals affirmed (R. 70), handing down an initial opinion (R. 70–78). On petition for rehearing (R. 79–94), the original judgment of affirmance was adhered to, but the opinion was modified in certain respects (R. 95–103). References are to the modified opinion which was handed down February 5, 1954, and which superseded the initial opinion.

picketing at the former's premises did not amount to a secondary boycott (R. 95–99). However, it then went on to uphold the injunction on the theory that a refusal of employees of a common or contract carrier to go through a picket line is incompatible with the common law and statutory duty imposed on such carriers to serve all members of the public without unreasonable discrimination (R. 99–103). The court rejected the contention that the National Labor Relations Act protected such refusal in this case and superseded the state law, stating (R. 102):

> * * * this disobedience is not complained of as an unfair labor practice but as a violation of the common law, the statutory law, and the Constitution of Kentucky. Aside from this, as we have shown, the illegal conduct of the employees could subject them to criminal prosecution. We find nothing in the provisions of the above Act or in the decisions of the Supreme Court of the United States construing it that makes such conduct legal when from time immemorial the several states have branded it as illegal. * * * It follows that the portion of the injunction requiring performance of the duty to carry American's goods in no way impairs the right to strike, the right to picket or any other right guaranteed by the federal law or the Constitution of the United States but that the order does, on the contrary, enforce obedience to the

law and Constitution of the Commonwealth and, as a consequence, it was proper.

Finally, respecting the contention that the agreement between the Union and the carriers sanctioned the refusal to cross the picket line, the court concluded that this provision was contrary to the responsibility imposed by Kentucky law on the carriers, and was thus void (R. 102–103).

SUMMARY OF ARGUMENT

A. From the earliest days of the Wagner Act it has been settled that the rights and remedies of the National Labor Relations Act are applicable to motor carriers, common and otherwise, whose operations affect commerce, no less than to other enterprises meeting the Act's jurisdictional requirements. An important segment of the rights and remedies under the Act is concerned with the class of activity involved in the instant case, *i. e.,* sympathetic participation by employees in disputes involving an employer other than their own. The Act comprehensively regulates this activity, affirmatively protecting it in Section 7 under certain circumstances; permitting the employer and the bargaining representatives to contract with respect thereto; and prohibiting it when it assumes the proportions defined in Section 8 (b) (4) (A). Moreover, with respect to the conduct prohibited, the Act, in Section 10 (l), not only provides for the usual Board remedial order, but also permits the Board, pending final decision,

to secure an injunction against the activity in an appropriate federal district court.

The injunction issued by the state court against petitioner and its members, which in effect requires the employees of motor carriers subject to the Act to cross a lawful strike-picket line established by their own union at the premises of the carriers' customers, not only touches a subject which the Act regulates in a comprehensive manner, but directly conflicts with rights and remedies provided by the Act. This picket line was established by the duly authorized bargaining representative of respondent's employees, and the Union invited action, by its own members who were employees of the motor carrier,[5] at respondent's premises, the situs of the primary dispute. The refusal of the carriers' employees to cross the line was in obedience to action by their own union, and far from constituting defiance of their employers' instructions, such refusal was specifically sanctioned by the collective bargaining contract between the carriers and the union (R. 21). In this situation, the sympathetic action which the union sought to have the motor carrier employees engage in falls within the protection of Section 7 of the Act. See *National Labor Relations Board* v. *Rockaway News Supply Co., Inc.*, 345 U. S. 71, 80: "[The Act] clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree."

In any event, Congress' comprehensive and careful handling of the type of activity regulated by the state court, especially in respect to utilizing injunctive remedies, indicates that the particular conduct herein is at least in the "area of labor combat" (*Garner* v. *Teamsters Union,* 346 U. S. 485, 500) covered by the Act. Under either hypothesis, the instant injunction would appear to be barred by this Court's prior decisions that the "states may not regulate in respect to rights guaranteed by Congress in § 7," nor invade a field which the Act has "occupied." *Bus Employees* v. *Wisconsin Board,* 340 U. S. 383, 390–391, n. 12.

B. The decision of this Court in the *Bus Employees* case, *supra,* likewise indicates that there is no basis for qualifying the effect of the Act on this dispute because Kentucky law has imposed on motor carriers, by reason of their public calling, a duty to serve without discrimination. In that case, the validity of Wisconsin legislation, depriving employees of certain public utilities and common carriers subject to the Act of the right to strike, was in issue. Its proponents argued that, in the light of the historic amenability of public callings to state control and the severe repercussions on a community of stoppages in such enterprises, it could not be assumed that Congress had intended by the Act to remove those businesses from the orbit of state regulation. This Court, however, rejected the contention, *inter*

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alia, because the whole history of the Act and its administration demonstrate that Congress intended to draw no distinction between businesses with a public calling and other enterprises. These same considerations are dispositive of the similar contention here.

Moreover, the foregoing analysis does not give rise to a conflict with or impair the policies of the other federal legislation in this field, the Motor Carrier Act. Although that statute requires that a common carrier by motor vehicle must furnish service without "unjust discrimination or any undue or unreasonable prejudice or disadvantage," 49 U. S. C. 316 (d), the Interstate Commerce Commission has held that this does not obligate a carrier to cross a picket line like that here, occasioned by a strike of the shipper's own employees. See *Montgomery Ward & Co., Inc.* v. *Consolidated Freightways, Inc.*, 42 M. C. C. 225.

ARGUMENT

THE NATIONAL LABOR RELATIONS ACT PRECLUDED THE STATE COURT FROM ORDERING THE CARRIER EMPLOYEES TO CROSS THE PICKET LINE AT RESPONDENT'S PREMISES

A. THE LABOR ACTIVITY REGULATED BY THE STATE COURT IS WITHIN THE FIELD COVERED BY THE ACT

The first case decided by the Board under the Wagner Act, *Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, held that the rights and remedies of the Act were available to the employees of

common carrier motor vehicles no less than to other employees in industries affecting commerce. In arriving at this conclusion, the Board noted, 1 N. L. R. B. at 42, that the Motor Carrier Act of 1935, "unlike the parallel legislation in the railway field," contained "no provisions for collective bargaining and employee freedom of organization" and that this "omission was succinctly explained * * * by Senator Wheeler * * * on the ground that the Wagner Act then before Congress would cover the field of motor transportation and that therefore such provisions need not be incorporated in the Motor Carrier Act (Cong. Record, 74th Congress, 1st Sess., Vol 79, p. [5660])." Accordingly, the Board in that case went on to adjudicate the merits, finding that the carrier had violated the Act by interfering with, restraining and coercing its employees in the exercise of rights guaranteed by Section 7. The Board's remedial order was subsequently sustained by this Court, *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.[9] Thereafter, the Wagner Act was applied in numerous cases involving all types of motor carriers whose operations affected commerce.[10]

[9] Also, e. g., *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272.

[10] *National Labor Relations Board* v. *Dixie Motor Coach Corp.*, 128 F. 2d 201 (C. A. 5), enforcing as modified 25

In amending the National Labor Relations Act, Congress made no changes which would have removed the labor-management relations of the motor transport industry from its ambit. Indeed, the legislative history indicates that, in formulating the restrictions on union activity added by Section 8 (b) of the amended Act (discussed *infra* pp. 20–21), Congress had before it the problems of that industry, including the problem here of the carrier's inability to serve customers whose premises were being picketed.[11] Accordingly, the rights and remedies of the amended Act have likewise been held applicable and applied to both

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N. L. R. B. 869; *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. 2d 51 (C. A. 4), enforcing as modified 47 N. L. R. B. 109, certiorari denied, 321 U. S. 795; *Great Southern Trucking* v. *National Labor Relations Board*, 127 F. 2d 180 (C. A. 4), enforcing 34 N. L. R. B. 1068, certiorari denied, 317 U. S. 652; *National Labor Relations Board* v. *East Texas Motor Freight Lines*, 140 F. 2d 404 (C. A. 5), enforcing 47 N. L. R. B. 1023; *Oklahoma Transportation Co.* v. *National Labor Relations Board*, 136 F. 2d 42 (C. A. 5), enforcing as modified 46 N. L. R. B. 1214; *National Labor Relations Board* v. *Capitol Greyhound Lines*, 140 F. 2d 754 (C. A. 6), enforcing 49 N. L. R. B. 156, certiorari denied, 322 U. S. 763; *National Labor Relations Board* v. *Brashear Freight Lines*, 119 F. 2d 379 (C. A. 8), enforcing as modified 13 N. L. R. B. 191.

[11] See Hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22, 80th Cong., 1st Sess., pp. 381, 386–387; Hearings before the House Committee on Education and Labor on H. R. 8, *et al.*, 80th Cong. 1st Sess., p. 576 ff.

common and other kinds of motor carriers whose operations affect commerce.[12]

An important segment of the rights and remedies under the Act of motor carrier employees and employers, as for those of other enterprises, is concerned with the type of activity involved in the instant case, *i. e.,* sympathetic participation by employees in disputes involving an employer other than their own. The Act comprehensively regulates this activity, affirmatively protecting it under certain circumstances; permitting the employer and the bargaining representative to contract with respect thereto; and prohibiting it when it assumes the proportions defined in Section 8 (b) (4) (A). Moreover, with respect to the conduct prohibited, the Act not only provides for the usual Board remedial order, but also, by section 10 (l) permits the Board, pending final decision, to secure an injunction against the activity in the appropriate federal district court.

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[12] E. g., *National Labor Relations Board* v. *Braswell Motor Freight Lines*, 209 F. 2d 622 (C. A. 5), enforcing as modified 101 N. L. R. B. 1151; *National Labor Relations Board* v. *Dean, J. L., d/b/a D & D Transportation Co.*, 212 F. 2d 207 (C. A. 5), enforcing N. L. R. B. 920; *National Labor Relations Board* v. *Red Arrow Freight Lines, Inc.*, 180 F. 2d 585 (C. A. 5), enforcing 77 N. L. R. B. 859, certiorari denied, 340 U. S. 823; *Amalgamated Association, etc.* v. *Dixie Motor Coach Corp.*, 170 F. 2d 902 (C. A. 8), reversing 74 F. Supp. 952; *National Labor Relations Board* v. *Houston and North Texas Motor Freight Lines*, 193 F. 2d 394 (C. A. 5), enforcing as modified 88 N. L. R. B. 1462.

Thus, Section 7 of the Act, *inter alia,* guarantees to employees, including those of motor carriers, the right to "assist labor organizations * * * and to engage in other concerted activities for the purpose of * * * mutual aid or protection." For reasons detailed in the brief previously filed by the Government in the *Rockaway News* case,[13] to pp. 17–66 of which the Court is respectfully referred, this guarantee, read in the light of Congress' objective of comprehending the conventional tactics of organized labor and of the breadth of Sections 2 (3) and 2 (9),[14] confers upon employees, not involved in any labor dispute with their own employer, the right to assist and make common cause with a union striking another employer, by refusing to cross its picket line established at the latter employer's premises.

Where, as here, an employee refuses in the course of his employment to cross a picket line

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[13] *National Labor Relations Board* v. *Rockaway News Supply Co., Inc.*, No. 318, October Term, 1952. In deciding this case, 345 U. S. 71, the majority of the Court found it unnecessary to reach this question, for it viewed the refusal to cross the picket line there as a breach of the "no-strike" clause in the collective bargaining contract between the employee's union and his employer.

[14] Section 2 (3) provides that the term "employee" shall not "be limited to the employees of a particular employer," and "shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute." Section 2 (9) defines "labor dispute" so that it is not dependent on "whether the disputants stand in the proximate relation of employer and employee."

at the plant of another employer who is involved in a labor dispute, the employee thereby "assists" the labor organization in its dispute with that employer. Manifestly, too, when the pickets invite employees of other employers to refrain from crossing the picket line and make common cause with them by withholding their services from the picketed employer and these employees in turn respond to that invitation, they are acting in concert with the pickets and the employees they represent for "the purpose of mutual aid or protection." "The reluctance of workers to cross a picket line is notorious. To them the presence of the line implies a promise that if they respond by refusing to cross it, the workers making the appeal will in turn cooperate if need arises. The converse, likewise, is implicit. 'Respect our picket line and we will respect yours.'" *Printing Specialties Union* v. *Le Baron*, 171 F. 2d 331, 334 (C. A. 9), petition for certiorari dismissed, 336 U. S. 949. In short, an employee who refuses to cross such a picket line is, in the words of Section 7, exercising "the right to * * * assist labor organizations * * * and to engage in other concerted activities for the purpose of * * * mutual aid or protection."[15] This conclusion is con-

[15] Cf. this Court's holding in *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U. S. 665, that the Act permits a labor organization to picket an employer with whom it is engaged in a labor dispute so as "to influence * * * employees of a customer * * * not to cross the picket line," this being no more than is "traditional and per-

firmed by the proviso at the end of Section 8 (b) (4), which declares that:

> nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act.

At the same time as it confers a right to respect a picket line, the Act contemplates that such right may be qualified in particular situations. Under the Act, this right, like "so many others," is "not unlimited in the sense that [it] can be exercised without regard to any duty which the existence of rights in others may place upon employer or employee." *Republic Aviation Corporation* v. *National Labor Relations Board,* 324 U. S. 793, 798. Hence, in recognition of the employer's competing interest in maintaining his operations, the Board has concluded that he may, without abridging rights protected by Section 7, require that the employee cross the picket line and, should the latter persist in declining to do so, then replace him with another employee.[16] Also, as the

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missible in a primary strike." *National Labor Relations Board* v. *Denver Building and Construction Trades Council,* 341 U. S. 675, 687.

[16] Under the earlier decisions of the Board, an employer could not qualify for this immunity if he discharged the

Board has added, the protection, which Section 7 accords to the right to observe a picket line, is given only when the picketing is not in itself unlawful.[17] Moreover, as this Court held in the *Rockaway News* case, 345 U. S. 71, the employee's bargaining representative may, in the collective agreement with the employer, entirely waive the right not to cross a picket line, or the parties may properly go to the other extreme where the employer consents in advance to unlimited exercise of the right. Thus, referring to the proviso to Section 8 (b) (4), quoted *supra*, p. 18, the Court stated, 345 U. S. at 80: "This clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross

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employee outright, but would first have to order him to assume the status of a full striker and, while in that status, find a replacement for him. See *Rockaway News Supply*, 95 N. L. R. B. 336, 337; *Cyril de Cordova*, 91 N. L. R. B. 1121, 1137-1138. This Court, when the *Rockaway News* case came before it, observed that the "distinction between discharge and replacement in this context seems to us as unrealistic * * * It is not based on any difference in effect upon the employee," 345 U. S. at 75. Accordingly, in *Robert H. Snow d/b/a Auto Parts Co.*, 107 N. L. R. B. No. 78, 33 L. R. R. M. 1114 (November 30, 1953), the Board sanctioned the outright discharge of an employee for disobeying the employer's order to cross a picket line, where there was "no evidence of anti-union bias," and it appeared, from the fact "that he hired a replacement who was willing to make the necessary deliveries without reservation," that the employer "acted only to preserve the efficient operation of his business" (n. 2).

[17] See *Pacific Telephone and Telegraph Company*, 107 N. L. R. B. No. 301, 33 L. R. R. M. 1433 (March 12, 1954).

a picket line if they so agree. And nothing in the Act prevents their agreeing upon contrary provisions if they consider them appropriate to the particular kind of business involved."

On the other hand, though the Act thus leaves room for the sympathetic participation of employees in disputes going on at another employer's premises, Section 8 (b) (4) (A) proscribes enlisting the aid of such employees by means of a secondary boycott designed to force neutral employers to cease doing business with the employer involved in the primary dispute.[18] Thus, for example, while the Act may permit the employees of a motor carrier to be induced by a picket line at a customer's premises not to serve him,[19] it proscribes inducing these employees to discontinue servicing that customer at their own employer's premises or elsewhere in the course of their employment.[20] Here too, however, the Act appears

[18] See *National Labor Relations Board* v. *Denver Building and Construction Trades Council*, 341 U. S. 675, 686–687.

[19] See *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U. S. 665; *Newspaper and Mail Deliverers' Union*, 90 N. L. R. B. 2135.

[20] *International Brotherhood of Teamsters, etc. and Roy Stone Transfer Company*, 100 N. L. R. B. 856; *International Brotherhood of Teamsters, etc. and Irvin J. Cooper*, 101 N. L. R. B. 1284; *International Brotherhood of Teamsters, etc. and Osceola Foods, Inc.*, 107 N. L. R. B. No. 63, 33 L. R. R. M. 1098; *International Brotherhood of Teamsters, etc. and Jay K. Independent Lumber Corp.*, 108 N. L. R. B. 189, 34 L. R. R. M 1195.

The inducement proscribed by Section 8 (b) (4) (A) is inducement of employees only, and it is not illegal under the legislative scheme for a labor organization to induce an

to allow for the operation of contractual arrangements between the parties. See *Rabouin d/b/a Conway's Express*, 87 N. L. R. B. 972, 981–982, enforced, 195 F. 2d 906, 912 (C. A. 2). Cf. *International Brotherhood of Teamsters, etc., and McAllister Transfer, Inc.*, 110 N. L. R. B. No. 224, 35 L. R. R. M. 1391 (December 16, 1954).

Viewing the facts of the instant case against this background, we think that the state court has not only laid hold of a subject which the Act regulates in a comprehensive manner, but has reached a result that conflicts with the rights and remedies which it has fashioned.[21] As already shown, *supra*, p. 4, the Board has consistently exercised jurisdiction over respondent, at whose premises the labor dispute and the picketing herein arose. It likewise has jurisdiction over the motor carriers servicing respondent. These carriers are directly engaged in interstate commerce (see n. 4, *supra*, p. 5) and their operations affect commerce within the meaning of the Act. Moreover, the sympathetic action which petitioner Union sought to have the motor carrier employees engage in, far from being interdicted

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employer to stop doing business with another person. *International Brotherhood of Teamsters, etc. and Arkansas Express, Inc.*, 92 N. L. R. B. 255; *Rabouin* v. *National Labor Relations Board*, 195 F. 2d 906, 911 (C. A. 2).

[21] For a general discussion of the problem presented by this case, see Note, *Duty of Common Carrier to Cross Picket Line of Shipper's Employees to Receive Goods for Carriage*, 67 Harv. L. Rev. 317 (1953).

under the Act, is one of the forms of mutual assistance and concerted activity affirmatively protected by Section 7 thereof.[22] Here, the picket line was established by the duly authorized bargaining representative of respondent's employees, and the Union invited action by the motor carrier employees only at respondent's premises, the situs of the primary dispute. Furthermore, unlike the situation in *Rockaway News,* the refusal of the carriers' employees to cross the line at respondent's factory was "in obedience to * * * action by [their] union" (345 U. S. at 75); and, rather than constituting defiance of their employers' instructions, their refusal was specifically sanctioned by the contract between the carriers and the Union (*id.,* at 80).[23]

In sum, in the situation here, Congress has concluded that a balance between the interests of employers, employees and the public is best achieved by leaving the carrier employees free

[22] The Court of Appeals of Kentucky apparently overlooked this Section in its conclusion that the Act did not have any application to the instant case. For its opinion indicates that it reached this conclusion solely on the ground that the Union's action "is not complained of as an unfair labor practice" (R. 102).

[23] Respondent's suggestion (Response to Petition For Writ of Certiorari, 4–5, 16) that the Union and the motor carrier employers did not wholeheartedly back the employees' refusal to cross the picket line does not establish the contrary. The incidents referred to by respondent relate only to the period after the injunction had issued and to the efforts of the Union and the motor carrier to insure compliance therewith (R. 31–33, 42–49, 51–54, 57–63, 64–68).

to honor the picket line at respondent's premises, a result which would also be consistent with the contractual arrangement between the carriers and the Union. The state court, on the other hand, has obliterated this freedom and rejected the arrangement of the parties, thereby according a greater protection to the interests of the employer than Congress deemed appropriate in the circumstances presented.

Accordingly, we believe that the instant state court injunction infringes upon a federally protected right. In any event, Congress' comprehensive and careful handling of the type of activity regulated thereby (pp. 15–21, *supra*), especially in respect to utilizing injunctive remedies,[24] indicates that the particular conduct here is at least in the "area of labor combat" (*Garner* v. *Teamsters Union*, 346 U. S. 485, 500) covered by the Act.[25] Under either hypothesis, the in-

[24] See Brief for the National Labor Relations Board in *Weber* v. *Anheuser-Busch, Inc.*, No. 97, this Term, pp. 21–25.

[25] See also, *Auto. Workers* v. *O'Brien*, 339 U. S. 454, 456–457; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, 389–390.

Auto. Workers v. *Wisconsin Board*, 336 U. S. 245, is distinguishable for it involved conduct outside of this "area"; the Court viewed the "quickie" strike there as a coercive technique which Congress neither considered nor sought to regulate in the Act, but left entirely "ungoverned." Similarly, the conduct and the remedy involved in *United Construction Workers* v. *Laburnum Corp.*, 347 U. S. 656, was outside the area preempted by the Act; the legislative history in respect to labor violence (unlike that relating to the peaceful activities here) specifically discloses (347 U. S. at

junction would appear to be barred by this Court's prior decisions that the "states may not regulate in respect to rights guaranteed by Congress in § 7," nor invade a field which the Act has "occupied." *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, 390–391, n. 12.[26] Moreover, as is shown in subpoint B, *infra*, the validity of this conclusion is in no way altered because it results in qualifying the special duty which Kentucky law has imposed on common or contract motor carriers to serve the public without discrimination.[27]

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pp. 668–669) that Congress intended to preserve a concurrent state power in this area, and, since the Act only provides an injunctive remedy against such violence, the Court also concluded that the supplementary remedy of damages provided by Virginia in that case constituted no intrusion upon or interference with the regulatory scheme of the Act.

[26] *Garner* v. *Teamsters Union*, 346 U. S. 485; *Capital Service Inc.* v. *National Labor Relations Board*, 347 U. S. 501; *Automobile Workers* v. *O'Brien*, 339 U. S. 454; *Plankinton Packing Co.* v. *Wisconsin Board*, 338 U. S. 953; *Bethlehem Steel Co.* v. *New York Board*, 330 U. S. 767; *Hill* v. *Florida*, 325 U. S. 538.

Giboney v. *Empire Storage & Ice Co.*, 336 U. S. 490, and *Local Union No. 10* v. *Graham*, 345 U. S. 192, relied on by respondent (Response to Petition for Certiorari, 17–19), are inapposite for they involved local businesses apparently not subject to the Board's jurisdiction, and thus did not present any question as to the superseding effect of the Act.

[27] Preliminarily, it may be noted that the Kentucky law itself specifies that the provisions applied by the state court herein "shall apply to interstate commerce, *except* insofar as such application is in conflict with any provision of the Constitution of the United States or the Acts of Congress." [Emphasis added.] Kentucky Rev. Stats., Sec. 281.610.

B. THE EFFECT OF THE ACT ON THE INSTANT LABOR DISPUTE IS NOT QUALIFIED BY THE SPECIAL STATUS OF MOTOR CARRIERS UNDER KENTUCKY LAW

The basic premise underlying the decision of the Court of Appeals of Kentucky seems to be that, because the duty of common carriers to serve the public without discrimination is so ingrained in the law and was expressly adopted by the state in both its Constitution and statutory law,[28] such duty is necessarily paramount to "the right to strike, the right to picket or any other right guaranteed by the federal law or the Constitution of the United States" (R. 102). A similar contention was rejected by this Court in *Bus Employees* v. *Wisconsin Board,* 340 U. S. 383.

In that case, Wisconsin had enacted legislation which deprived employees of certain public utili-

[28] To the extent that the common law imposes the duty of an "insurer" upon carriers, it appears that only so-called common carriers (*i. e.*, those who hold themselves out to serve the general public), as distinguished from private or contract carriers who agree to serve only those covered by specific contract, are subject thereto. See cases collected in 9 American Jurisprudence, Carriers, §§ 10, 661. Accordingly, in imposing an obligation on both common and contract carriers to serve without discrimination, the Kentucky statute herein (p. 39, *infra*) goes beyond the common law rule, and even the Kentucky Constitution itself which is limited to common carriers (p. 37, *infra*). In this respect, the statute also goes beyond the Motor Carrier Act, whose provision against "unjust discrimination" is made applicable only to common carriers (see pp. 36–37, *infra*).

ties and common carriers [29] subject to the Act of the right to strike, substituting therefor compulsory arbitration. Invoking this legislation, the Wisconsin courts enjoined strikes called by the employees of local transit and gas companies otherwise subject to the Act, denying their claim that the state statute, as applied to them, abridged rights guaranteed by the Act and was thus invalid. The prior decisions of this Court which appeared to support the employees' contention were distinguished principally on the ground that, in the light of "the historic amenability" of public callings to state control and the severe repercussions on a community of stoppages in such enterprises, it could not be assumed that Congress had intended by the Act to remove those businesses "from the orbit of State regulation" (see 340 U. S. at 403–405). But, the majority of this Court expressly repudiated this view, in these words (340 U. S. at 391–393):

> Ever since the question was fully argued and decided in *Consolidated Edison Co.* v. *Labor Board,* 305 U. S. 197 (1938), it has been clear that federal labor legislation, encompassing as it does all industries "affecting commerce," applies to a privately owned public utility * * *. The courts of appeal

[29] The statute applied to a "public utility employer," which was defined as including any employer "engaged in the business of furnishing water, light, * * * public passenger transportation." Wisconsin Stat., 1949, Section 111.51.

> have uniformly held enterprises similar to * * * the Milwaukee gas and transit companies before us in these cases subject to the provisions of the federal labor law. No distinction between public utilities and national manufacturing organizations has been drawn in the administration of the Federal Act, and, when separate treatment for public utilities was urged upon Congress in 1947, the suggested differentiation was expressly rejected. Creation of a special classification for public utilities is for Congress, not for this Court. [Footnotes omitted.]

So here, as already shown, *supra* pp. 12–15, the Act draws no specific distinction between motor carriers (common or otherwise) and other employers; the Board has consistently exercised jurisdiction over such carriers when their operations have affected commerce; and the courts have sustained the exercise of such jurisdiction. Moreover, the legislative history of the amended Act reveals that Congress gave specific consideration to the labor problems of common carriers (see n. 11, *supra*), and, despite such consideration, the amendments enacted furnish no indication that Congress intended the carriers' problems to be treated differently from those of other employers.[30] Accordingly, there is no more basis

[30] Indeed, the proviso to Section 10 (a) empowering the Board, in accord with the prescribed conditions therein, to cede jurisdiction "over any cases in any industry (other than mining, manufacturing, communications, and transportation

for permitting the policy of Kentucky in respect to motor carriers to qualify rights under the Act than there was for sustaining the comparable policies of Wisconsin in the *Bus Employees* case.[31]

except where predominantly local in character)" confirms the conclusion that Congress for purposes of the Act drew no distinction between the transport industry and other industries subject to the Act and continued to include that industry within the ambit of the statute.

Cf. Labor Management Relations Act, 1947, Secs. 206-210, 29 U. S. C. 176-180, permitting the United States to obtain injunctive relief against strikes which imperil the "national health or safety." In enacting this qualification, Congress considered and rejected a broader proposal which would have limited the rights of employees in "*transportation*, public utility or communication services" whenever a labor dispute threatened a cessation or curtailment of "services essential to the public health, safety, or interest." H. R. 3020, 80th Cong., 1st Sess., Secs. 203-206. See *Bus Employees* v. *Wisconsin Board*, 340 U. S. at 392-393, n. 15-16.

[31] It is immaterial that the Wisconsin statute deprived utility employees of the right to strike, whereas, according to respondent's interpretation (Response to Petition for Certiorari, 7-8), the Kentucky injunction here did not preclude the carrier employees from striking but merely from refusing to cross the picket line while in the course of employment. Since, as we have shown, the right to cross a picket line in this case is protected by the Act no less than the right to strike, the "narrower" Kentucky restraint abridges rights under the Act just as much as the "broader" Wisconsin ban. Moreover, the interest of a state in protecting a single shipper against discrimination can be no greater than its interest in protecting the shipping public generally from a total strike; if the latter would not warrant suspension of the Act's reach, the former certainly should not either.

See also, *S. E. Overton Co.* v. *Teamsters,* 115 F. Supp. 764, 771–772 (W. D. Mich.).

It should also be emphasized that the foregoing analysis does not give rise to a conflict with or impairment of the policies of the Motor Carrier Act, the other federal legislation in this field. Cf. *Southern Steamship Co.* v. *National Labor Relations Board,* 316 U. S. 31, 47. As noted at the outset, *supra,* pp. 12–15, that statute contemplates that the labor relations of motor carriers and their employees shall be governed by the National Labor Relations Act. Moreover, although that statute requires common carriers to furnish services without "unjust discrimination or any undue or unreasonable prejudice or disadvantage", 49 U. S. C. 316 (d), the Interstate Commerce Commission has held that this does not obligate a carrier to cross a picket line occasioned, as here, by a strike of the shipper's own employees.[32] Accordingly, just as the require-

[32] See *Montgomery Ward & Co., Inc.* v. *Consolidated Freightways, Inc.,* 42 M. C. C. 225; *Montgomery Ward & Co., Inc.* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.,* 268 I. C. C. 257. But cf. *Montgomery Ward & Co., Inc.* v. *Santa Fe Trail Transportation Co.,* 42 M. C. C. 212.

Notwithstanding the carrier's immunity to an ICC cease and desist order, he may still be liable in damages to the shipper. See *Minneapolis & St. Louis Railway Co.* v. *Pacific Gamble Robinson Co.,* 34 L. R. R. M. 2739 (C. A. 8, August 20, 1954); *Montgomery Ward & Co., Inc.* v. *Terminal Co.,* 32 L. R. R. M. 2386 (D. Ore., June 30, 1953). How-

ment in Section 202 of the Federal Communications Act, 48 Stat. 1064, 1070, 47 U. S. C. 202, that telegraph or radio companies must serve all without "unjust or unreasonable discrimination" did not warrant an abridgment of the Section 7 rights of the employees of those employers in *National Labor Relations Board* v. *Globe Wireless, Ltd.*, 193 F. 2d 748, 750–751 (C. A. 9), so the Motor Carrier Act does not require a curtailment in those rights of the employees of motor carriers.[33]

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ever, in this respect the carrier appears to be in no different position from that of a union who, though found by the Board not to have violated Section 8 (b) (4) (A) of the Labor Relations Act, may still have to pay damages on account of the same conduct, as a result of a suit brought under Section 303 of the Labor Management Relations Act, 61 Stat. 136, 158, 29 U. S. C. 187. See *United Brick & Clay Workers* v. *Deena Artware, Inc.*, 198 F. 2d 637, 642 (C. A. 6), certiorari denied, 344 U. S. 897; *Longshoremen's Union* v. *Juneau Spruce Corp.*, 342 U. S. 237, 243–244.

[33] Cf. the holdings that the Motor Carrier Act does not relax the requirements of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. 101, *et seq.*, so as to liberalize the issuance of injunctions in the federal courts against motor carrier employees engaging in strike activities. *Lee Way Motor Freight, Inc.* v. *Keystone Freight Lines, Inc.*, 126 F. 2d 931, 934 (C. A. 10), certiorari denied, 317 U. S. 645; *East Texas Motor Freight Lines* v. *International Brotherhood of Teamsters*, 163 F. 2d 10 (C. A. 5); *Southeastern Motor Lines, Inc.* v. *Hoover Truck Co., Inc.*, 34 F. Supp. 390, 392 (M. D. Tenn.). Cf. *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the injunction issued by the Kentucky Court in this case is invalid, and that the judgment below should be reversed.

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APPENDIX

1. The National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. 141, *et seq.*, in pertinent part, provides:

DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concern-

ing the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * *

[61 Stat. 137, 29 U. S. C. 152.]

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

[61 Stat. 140, 29 U. S. C. 157.]

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, trans-

port, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided,* That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if

the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

* * * * *

[61 Stat. 140, 29 U. S. C. 158.]

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * *

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like char-

acter in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: * * * In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D). [61 Stat. 146, 29 U. S. C. 160.]

2. Section 216 (d) of the Motor Carrier Act, 1935 (Interstate Commerce Act, Part II), 49 Stat. 543, 558, as amended, 54 Stat. 924, 49 U. S. C. 316 (d), provides:

Undue preferences or prejudices prohibited

All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust

and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

3. The pertinent provisions of the Constitution and Revised Statutes of Kentucky provide:

CONSTITUTION OF KENTUCKY

Section 196:

Regulation of common carriers; no relief from common law liability. Transportation of freight and passengers by railroad, steamboat or other common carrier, shall be so regulated, by general law, as to prevent unjust discrimination. No common carrier shall be permitted to contract for relief from its common law liability.

Kentucky Revised Statutes:

Section 281.600. *Administrative Functions and Powers of the Department.*

The Department of Motor Transportation shall exercise all administrative func-

tions of the state in relation to motor transportation as defined in this chapter, and shall apply, as far as practicable, the administrative and judicial interpretations of the Federal Motor Carrier Act. It shall have the right to regulate motor carriers as provided in this chapter, and to that end may establish reasonable requirements with respect to continuous and adequate service of transportation, systems of accounts, records and reports, preservation of records and safety of operation and equipment. It may issue subpoenas, subpoenas duces tecum and orders of personal attendance for the attendance of witnesses, any proceeding before it, and permit the [sic] and production of pertinent records, for taking of depositions, all in accord with the Civil Code of Practice, and it shall have the power to make such rules and regulations as it may deem necessary to carry out the provisions of this chapter.

Section 281.610. *Regulation of Interstate Commerce.*

(1) The provisions of this chapter shall apply to interstate commerce, except insofar as such application is in conflict with any provision of the Constitution of the United States or the Acts of Congress.

(2) The commissioner may grant a certificate of convenience and necessity for the transportation of persons or property for compensation in interstate commerce, and may regulate such interstate commerce under the authority of and in accordance with the provisions of any Act of Congress vesting in or delegating to the commissioner such authority as an agency of the United States Government. The commissioner may notify the proper department of the

Federal Government of his assent to the requirements and conditions of such Act of Congress in regard to interstate commerce by motor vehicle.

Section 281.685. *Adherence to Rates, Fares, Charges and Schedules; Discrimination.*

(1) No common carrier shall charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property or for any service in connection therewith, than the rates, fares and charges specified in its tariffs and classifications filed with the department and in effect at the time; nor shall any common carrier refund or remit any part of the rates, fares or charges so specified, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.

(2) No contract carrier shall charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property or for any service in connection therewith than that contained in the contract required to be filed with the department and in effect at the time; nor shall any contract carrier refund or remit any part of the charges specified in the contract, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.

Section 281.990. *Penalties.*

(1) Any person who violates, or causes, aids or abets any violation of, any of the

provisions of this chapter or any order, rule or regulation lawfully issued pursuant to authority granted by this chapter, or who knowingly makes any false or erroneous statement, report or representation to the Department of Motor Transportation with respect to any matter placed under the jurisdiction of the department by this chapter, or who knowingly makes any false entry in the accounts or records required to be kept pursuant to the authority granted by this chapter, or who knowingly fails to keep, or knowingly destroys or mutilates, any such accounts or records, shall be fined not less than fifteen dollars nor more than two hundred dollars, or imprisoned for not more than thirty days, or both. Every device to evade or to prevent the application of any provision of this chapter, or any lawful order, rule or regulation of the department issued pursuant thereto, shall constitute a violation thereof.

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